

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Children's Television Obligations
Of Digital Television Broadcasters

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MM Docket No. 00-167

To: Secretary, Federal Communications Commission

COMMENTS

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EXECUTIVE SUMMARY

Across its many distribution platforms, The Walt Disney Company (“Disney”) is a recognized leader in providing high-quality, age-appropriate content that appeals to children and parents alike. Disney appreciates the Commission’s concerns regarding commercial matter in interactive services, and is cognizant of these concerns as it develops interactive children’s television content. Disney, like the Commission, believes that interactive services promise to provide significant benefits. However, development of these services currently is in the early stages. Thus, imposing regulation at this time is unnecessary and would not result in benefits that the Commission intends but rather could hamper further development of beneficial services. Instead of adopting regulations at this time, Disney respectfully requests that the Commission actively monitor the development and roll-out of interactive services through an ongoing dialogue with the relevant industries, so that the Commission may be poised to take action—if ultimately necessary and appropriate.

If the Commission proceeds to adopt rules governing interactive services related to children’s television programming, Disney urges the Commission to proceed with caution in regulating these evolving services. Specifically, Disney submits that:

- Current interactive television services do not involve the potential for harm envisioned by the Commission. Instead, these services, much like a DVD, are likely to offer viewers access to a pre-determined amount of age-appropriate bonus content in a controlled environment very different from the Internet.
- Interactive television services are in their early stages, and thus are difficult to define. The Commission should not regulate interactive services until it is better able to define the interactive features, and associated harms, it seeks to address.
- Regulation could impede the development of interactive television services at a critical stage in their growth. Given that there is not yet an established business model for these services, regulation could hamper further development. Offering programmers flexibility instead of additional regulation would prevent this result and would be consistent with the Commission’s policy of not overburdening nascent services.
- The Commission’s website-reference rules, which address concerns similar to those raised by interactive services, are subject to several petitions for reconsideration and are the subject of an ongoing industry dialogue. The Commission should not adopt further rules regarding children’s access to content through links until these issues are finally resolved.

- The Commission’s authority to regulate interactive services is not well-settled and the Commission should not adopt regulations where other non-regulatory options are available.

In addition, the specific proposals on which the Commission seeks comment—advance parental opt-in, applying commercial limits to interactive content, and defining commercial matter in the context of interactive services—similarly are unnecessary and would result in several practical implementation problems. The parental opt-in requirement is unnecessary given parental controls already built-in to interactive services and likely would be difficult if not practically impossible to implement. Redefining commercial limits at this time also would be problematic, especially given the unique nature of interactive services. The Commission should not regulate video on demand services for similar reasons.

Ultimately, Disney believes that instead of regulating interactive services at this time, the Commission should monitor the marketplace and work with the industry to encourage the continued responsible implementation of interactive services.

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Of Digital Television Broadcasters)

² See In the Matter of Children’s Television Obligations of Digital Television Broadcasters, *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 00-167, FCC 04-221 (rel. Nov. 23, 2004) (“*Order and Further Notice*”).

I. BACKGROUND

Disney is a worldwide entertainment company that produces and distributes content across a variety of distribution platforms, including broadcast television stations, a national broadcast television network, entertainment cable networks, kid-focused cable networks, and the Internet. Across all of these platforms, Disney is committed to providing high-quality content that appeals to parents and children alike. Some of the programming Disney selects for its kid-focused services is educational and informational; other programming simply is the kind of enjoyable, high-quality, age-appropriate entertainment programming that parents and children have come to expect from Disney.³ By consistently providing this high-quality programming, Disney has developed a special relationship and trust with parents.

Disney is committed to following commercial standards that respect the special nature of its programming and the trust that parents place in Disney products. Specifically, Disney acts in accordance with its own internal standards regarding inclusion of commercial matter in children's programming and related on-line content, as well as governing statutes and regulations. For example, Disney Channel provides programming to children without direct advertiser support, instead relying on subscriber fees, and only extremely limited, select sponsorships for some of its programming. While other Disney platforms rely on more

³ For example, Disney Channel's educational and informational programming block for its youngest viewers (ages 2-5), known as "Playhouse Disney," features learning-based programming highlighted by episodes in which characters learn to value the differences they encounter—in shape, size, color, gender and ability. Disney's other children's programming, which offers parents and children an age-appropriate, pro-social alternative to general entertainment programming, has proven to be both popular and award-winning. For 2004, Disney Channel primetime was #1 in its targeted demographic of kids 6-11 for the second consecutive year; #1 with tweens 9-14 for the third consecutive year; and #3 in both households and total viewers against all basic cable networks, according to Nielsen. In January 2005, Disney Channel stars were honored with an unprecedented five nominations for the 36th NAACP Image Awards, which honor individuals and projects that support positive images for people of color in arts and entertainment.

traditional advertisements to support their children's programming costs, all of those advertisements are reviewed by experienced personnel who ensure that the commercial content is consistent with Disney's standards and practices. Similarly, the Walt Disney Internet Group has developed its own internal commercial standards, which include, at a minimum, review by qualified personnel as well as the clear marking of third party commercial content as "advertisements" or "ads."

Disney believes that its own internal policies strike the appropriate balance between non-commercial and commercial content and Disney respects the Commission's concerns in this area. Disney also is cognizant of these concerns as it develops and rolls-out new interactive children's television content. Nonetheless, given that the roll-out of these services is in the early stages, Disney is concerned that imposing regulation at this time would not result in the benefits intended by the Commission, but rather would further complicate and deter the evolution of innovative, high-quality interactive children's television content. Therefore, Disney proposes that the Commission at this point work with Disney and other interested parties to formally monitor developments in this area so that the Commission can learn more about the nature of these services and be prepared to take action, if such action would become appropriate at a later date.

If the Commission proceeds to adopt rules governing interactive services related to children's television programming, Disney urges the Commission to proceed with caution in regulating these evolving services. Specifically, Disney submits that:

- (i) current interactive television services do not involve the potential for harm envisioned by the Commission;
- (ii) it is unnecessary for the Commission to adopt rules governing interactivity in children's television programming at this time;

- (iii) the specific rules proposed in the Further Notice have practical implementation problems; and
- (iv) the Commission should clarify that interactive video on demand and subscription video on demand (“VOD/SVOD”) services currently are exempt from children’s television regulation, and that further regulation of such services is unnecessary at this time.

Ultimately, Disney suggests that further monitoring and continued dialogue between industry innovators and the Commission would better serve the public interest than implementation of a regulatory structure at this early point in development.

II. CURRENT INTERACTIVE TELEVISION SERVICES DO NOT INVOLVE THE POTENTIAL FOR HARM ENVISIONED BY THE COMMISSION

As an initial matter, the Commission should recognize that current interactive television services do not possess the potential for harm envisioned by the Commission. The Commission’s primary concern, as expressed in the Further Notice, is that children will access commercial content through links to the internet or that children will access the internet (and content not appropriate for kids) after accessing interactive television content (that is appropriate for kids). This concern is unfounded at this time because current interactive television services—and in particular those in development by Disney—do not anticipate connecting to the worldwide web. Instead, these services at this point are being designed to at most allow viewers to connect to a finite amount of additional content provided ahead of time by the programmer to the MVPD.⁴ The programmer and the MVPD together control the content and the navigation through this content. In many cases, a viewer may “click” on an on-screen image to access additional different but related content, such as character biographies or a game involving the

⁴ With cable operators, content typically is stored on a server; with satellite providers, content is cached in the incumbent memory of the digital set top box or “pushed” to the local hard drive of the set top box, if it is a digital video recorder.

show's characters. In this and other respects, the interactive services currently offered or anticipated turn the traditional television viewing experience into a DVD-like viewing experience. Like a DVD, interactive television services in children's programming at this point offer a pre-determined amount of age-appropriate bonus content, accessible by user choice.

In sum, at this point, interactive television services provide children with a richer viewing experience, in an environment, very different from the Internet. Accordingly, the Commission need not regulate interactive television services out of a perceived concern that children will access commercial or inappropriate content through links to the Internet. Instead, the Commission should focus on promoting the current and future benefits of interactive television services in children's television programming. The best way to promote these benefits is not to regulate interactive television services at this time, as further set forth in Section III below.

III. IT IS UNNECESSARY FOR THE COMMISSION TO REGULATE INTERACTIVITY IN CHILDREN'S PROGRAMMING AT THIS TIME

In recognition of the potential for innovative, enriching interactive television content for kids, the Commission has vowed to encourage, not discourage, such services. Specifically, the Commission's stated goal is to avoid the placement of "unnecessary barriers in the way of technical developments in this area that may take place."⁵ In order to achieve this goal, the Commission should refrain from regulating interactive television services at this time. Specifically, regulation of interactive television services in children's television programming would be unnecessary because:

- (i) interactive television services are in the early stages of development and roll-out and thus, as seen in the Commission's Further Notice, are difficult to define;

⁵ *Order and Further Notice* at ¶ 53.

- (ii) regulations could impede the development of high-quality, interactive television services;
- (iii) the Commission's other website-related rules are the subject of petitions for reconsideration and discussion, and any new interactive rules should be issued only after full consideration of those rules; and
- (iv) the Commission's legal authority to regulate in this area is not well-established.

For all of these reasons, Disney urges the Commission to refrain from adopting rules governing interactivity in children's programming at this time and instead monitor the marketplace for future developments that may trigger the need for Commission intervention. Disney, of course, would be willing to engage in any such process. This monitoring approach would be consistent with the Commission's approaches to other new television related developments, such as digital television and plug-and-play, where the Commission engaged in a series of educational meetings prior to (and in some cases in place of) imposing regulations. Continued monitoring, in combination with an ongoing dialogue between industry representatives and the Commission, will position the Commission to intervene with rules in the event that any of the Commission's concerns regarding interactive services emerge.

A. The Commission Should Not Consider Regulating Interactive Television Services When Such Services Are In Their Infancy, and Thus Difficult to Define

The Commission should not adopt rules restricting interactivity in children's programming at this time. Although Disney is a leader in this area, even Disney's interactive services are in the early stages of development and roll-out. Interactive children's television services generally are not available to consumers at this time and only a few services are being offered in test markets.⁶ At this early stage of development, it currently is not possible or

⁶ Disney has not launched any interactive services except for a subscription video on demand service in limited markets.

prudent to try to define what programming, and what features in that programming, should be or would be subject to Commission regulation. This “moving target” problem is apparent in the short Further Notice, in which the Commission mentions only one type of interactivity—“direct, interactive, links to commercial Internet sites”—a service that Disney believes is not offered at this time.⁷ Services that actually are under development at this time are varied, and it currently is unclear which services will be offered to the public, let alone which services may cause commercial matter concerns or other content concerns. Accordingly, the Commission should not adopt rules restricting interactivity in children’s programming until it can better define the interactive television features it seeks to address, and the harms it seeks to remedy.

B. Regulation At This Time Could Impede the Development of Beneficial Interactive Television Services

The Commission also should refrain from regulating interactivity in children’s programming at this time because such regulation could impede the development of quality interactive television services at a critical stage in their growth. Interactivity in children’s programming has the potential to benefit children in numerous ways. The Commission has recognized this potential value, concluding that “direct links to websites with program-related material could provide beneficial educational and informational content in children’s programs.”⁸ Although Disney’s current interactive services do not include direct links to websites, its general experience with developing interactive television services validates the Commission’s tentative conclusion that interactive services promise to deliver significant benefits. As indicated above, Disney presently is developing interactive television content that

⁷ *Order and Further Notice* at ¶ 71. As noted above, links to commercial Internet sites are not the focus of interactive television; rather, the intent is to offer gated content that enriches the traditional television viewing experience.

⁸ *Id.* at ¶ 53.

includes additional programming clips, games or other bonus content. For example, a program could include an intermittent image or menu option that if “clicked on,” will lead to a one-minute interview with a program’s star, a simple spelling game, or other age-appropriate entertainment content. Disney believes that these services are only the beginning of many beneficial interactive television services that could develop in the future.

In light of these and other potential benefits, Disney is continuing to develop interactive television products with the goal of offering these services to the public in the near future.⁹ However, if the Commission imposes regulations on these services, it will become more difficult for content providers like Disney to proceed with developing interactive television services and distributors may well be less likely to work with programmers to offer such services. In this respect, Disney shares the Commission’s own concern that limiting interactive television services “could hamper the ability of broadcasters to experiment with potential uses of interactive capability in children’s programming.”¹⁰ Specifically, regulation could make further development cost-prohibitive given that there currently is no established business model for, and no significant revenue from, interactive services. Continued regulatory flexibility, and not new regulation, is what children’s television programmers need in order to experiment freely with different services and their associated business models. However, as stated above, Disney is cognizant of the Commission’s concerns in this area and will continue to design its products with those concerns in mind.

Continuing to provide children’s programmers with flexibility would be consistent with the Commission’s well-established policy of refraining from regulation during the early stages of

⁹ Disney’s ability to offer these services to the entire public is limited by the technological limitations of each MVPD and its ability to negotiate content carriage agreements with each MVPD.

¹⁰ *Order and Further Notice* at ¶ 53.

product development in order not to burden nascent services. In a recent example of this policy, the Commission declared that pulver.com's voiceover internet protocol service was an unregulated information service and "formalize[d] the Commission's policy of nonregulation" in order to "bring a measure of regulatory stability to the marketplace and therefore remove barriers to investment and deployment" of a service that "promise[s] significant consumer benefits."¹¹ Other examples of purposeful Commission non-regulation of an emerging service or product include the Commission's decisions concerning cable modem and ultrawideband services. In each case, the Commission wisely refrained from prematurely over-regulating a developing service. The Commission should do the same here, and should not regulate interactive children's programming services at this time. Instead, the Commission could adopt a more flexible approach under which it actively monitors the development of interactive television services and is better positioned to take action if necessary or appropriate.

C. Regulation Would Be Premature and Inappropriate Given the Status of the Commission's Related Website Reference Rules

At the same time it released the Further Notice, the Commission adopted rules prohibiting certain references to Internet websites in children's television programming ("Website Reference Rules").¹² Rules regarding interactivity in children's television programming would address the same primary concern that motivated the Website Reference Rules—children's access to additional commercial content through "links." Interactive television services, like website references, may involve access to non-linear content, accessed by the user. Given these shared characteristics, rules regarding interactivity in children's

¹¹ See Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service, *Memorandum Opinion and Order*, FCC 04-27, WC Docket No. 03-45 (rel. Feb. 19, 2004)

¹² *Order and Further Notice* at ¶ 51.

programming should flow from, and at least not be inconsistent with, the Website Reference Rules. The Website Reference Rules, however, are the subject of several petitions for reconsideration.¹³ Private parties like Disney also currently are discussing appropriate alternatives to the Website Reference Rules. Until the parties involved in the dialogue over the Website Reference Rules complete their discussions, and until the Commission takes action on the petitions, the Commission should not adopt another new set of rules in this evolving area.

D. Regulation Would Be Inappropriate Because the Commission's Authority in this Area Is Not Well-Settled and There Are Alternatives to Regulation

The Commission also should refrain from adopting interactivity rules at this time because the Commission's legal authority to regulate the content of interactive television services is not well-established. The Further Notice does not mention any source of authority for this regulation. It also is not clear that the source of the Commission's general authority to regulate commercial content in children's programming—the Children's Television Act of 1990 ("CTA")—would provide authority to regulate the content of interactive television services related to children's programming (especially given that interactive services did not exist at the

¹³ See, e.g., Petitions for Reconsideration of the WB Television Network, The Walt Disney Company, Viacom, Univision Communications, Inc., Turner Broadcasting Systems, Inc., Nickelodeon, NBC Universal, Inc., National Association of Broadcasters, and Fox Entertainment Group, Inc. The reasons for reconsidering the Website Reference Rules also are valid reasons for not adopting interactivity rules at this time. For example, some petitioners noted that the Commission failed to provide proper notice of its Website Reference Rules, which resulted in unclear rules. The Commission would face a similar argument if it issued specific interactivity rules based on a general, three-paragraph Further Notice that does not fully advise parties of the rules under consideration. Parties also challenged the Website Reference Rules as unnecessary given the industry's voluntary efforts to address the Commission's concerns. Cable programmers and broadcasters also are likely to address the proper use of interactivity in children's programming; thus, interactivity rules, like the Website Reference Rules, are unnecessary given ongoing industry efforts. Finally, rules regarding interactive television services, like the Website Reference Rules, could entangle the Commission in a myriad of content-related issues and determinations, due to necessary reviews of interactive television content.

time of enactment).¹⁴ When it adopted the Website Reference Rules, the Commission stated that it was interpreting the commercial time limits in the CTA.¹⁵ In regulating interactive television services, the Commission presumably would rely upon this same jurisdictional theory. A primary problem with this approach, however, is that the CTA and the commercial time limits contained therein solely address the “duration of advertising in children’s television programming” provided by broadcasters and cable operators.¹⁶ The CTA addressed only the children’s programming itself—and not links to other content related to that children’s programming. In an area where the FCC’s jurisdiction is not well-settled, the Commission should take the measured approach of monitoring the marketplace and taking action only if its tentative concerns become reality.

IV. THE SPECIFIC RULES SUGGESTED BY THE COMMISSION HAVE PRACTICAL IMPLEMENTATION PROBLEMS

As demonstrated above, it would be inappropriate for the Commission to regulate interactivity in children’s television programming at this time. Consideration of the more specific issues raised in the Further Notice also would be imprudent. These proposals include: (i) requiring parents to “opt in” to interactive services in advance; (ii) applying commercial limits to interactive content; and (iii) defining commercial matter in the context of interactive services. Each of these proposals is addressed in turn below.

¹⁴ Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996 (1990).

¹⁵ *Order and Further Notice* at ¶ 50.

¹⁶ Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996 (1990).

A. Advance Parental Opt-In

In the Further Notice, the Commission proposed prohibiting interactivity during children's programming that connects viewers to commercial matter unless parents "opt in" to such services in advance. The Commission believed that this feature would help ensure that "parents can control what information their children can access."¹⁷ Disney, like the Commission, supports affording control to parents. However, Disney believes that a government-constructed advance opt-in regulation is unnecessary given the multiple levels of parental control already built-in to interactive services. These controls begin with the requirement that parents purchase or subscribe to specific levels of services that include interactive services, or to individual segments of an interactive service, such as a game. Other parental controls currently offered or being planned include opt-out features in set top boxes and ratings systems. The fact that many young children will not be developmentally able to use the interactive features without parental guidance provides another level of parent-controlled protection. Disney also anticipates establishing areas with pre-supplied content, some of which may divide Disney's interactive content into age-appropriate categories. MVPDs add yet another layer of protection because programmers must negotiate for the carriage of additional interactive content with MVPDs, who have a financial interest in satisfying parents that the interactive content they carry is appropriate for children. In sum, government-constructed opt-in regulation is unnecessary at this time because sufficient parental controls already are built-in to interactive television services.

An opt-in requirement also would hinder the development of interactive services by blocking access to interactive services and thus preventing households from discovering this

¹⁷ *Order and Further Notice* at ¶ 71.

enriching content. As a result, households would not automatically have the opportunity to discover and evaluate these services for themselves. Many households never would enjoy the benefits of interactive services because one cannot take advantage of, or choose to receive, a service that one never realizes is available. By preventing households from receiving these services automatically, the opt-in feature would drastically reduce the number of households receiving interactive services. Programmers then would not have the incentive to develop interactive services because they would not have any certain audience for such services. With limited access to households, programmers also could not adequately assess the popularity of some services versus others.

An opt-in requirement also is ill-advised because it would result in a variety of practical problems. The most obvious practical problem is how to obtain consent given that broadcasters and programmers do not have a direct relationship with viewers of their programming. Would parents give their consent to a station, a network, or their MVPD, or some combination thereof? How often and under what basis would consent be necessary, *i.e.*, would consent be given on a per-channel, per-program, per-advertiser or per-click basis? The Commission did not mention any of these complicated issues in its short Further Notice but it would have to address such practicalities, as well as numerous others, if it were to move forward with a parental opt-in feature. Given these realities and other problems identified above, the Commission should not adopt a parental opt-in requirement at this time. Instead, the Commission should permit interactive services to develop, monitor these developments, and adopt regulation only if these services actually trigger parental concern.

B. Commercial Limits

The second specific issue on which the Further Notice seeks comment is how to apply commercial limits to interactive content, given the Commission's concern that interactive content could "cause a commercial to last much longer than a 30-second or 15-second spot."¹⁸ This statement apparently reflects the Commission's concern that a child will click on a link in a commercial advertisement, leading directly to additional commercial content. There is no indication that any such issue currently exists. As indicated above, at the current time, the interactive content in development consists of traditional programming and certain bonus content related thereto.¹⁹ In any event, the Commission should not attempt to redefine commercial limits for interactive programming until it better understands how commercial content could in the future be integrated into interactive programming and what to include in any commercial limit calculations.

It also would be imprudent for the Commission to move immediately to specific rules in this area given the general nature of the Commission's Further Notice on this issue and the unique characteristics of non-linear interactive television services. For example, in a traditional television program, the length of commercial matter is relatively easy to calculate because the programming, including the commercial matter contained therein, is delivered in a linear fashion—*i.e.*, it is "sent" to all viewers at an exact time of day, and lasts exactly the same amount of time, for all viewers. Interactive services, on the other hand, are non-linear and are subject to the direct, intermittent control of the user, who chooses whether, when and how long to view

¹⁸ *Id.* at ¶ 72.

¹⁹ Although Disney and other content providers may consider including commercial matter in their interactive services in the future, it currently is not possible to know what form this commercial matter would take.

some, all or none of the content. These characteristics make time measurement in interactive services an entirely different exercise than in the linear context. For example, it is unclear how a programmer or an MVPD would track the time each individual child spends in and out of interactive applications, and calculate what amount of commercial matter the child actually viewed. In light of these and other difficulties, the Commission presently should not consider how to redefine its commercial matter calculations for interactive services. Instead, the Commission should monitor the marketplace to learn more about what interactive services ultimately are offered, and how commercial content is incorporated therein. After gaining this knowledge, the Commission will be better able to put forth specific proposals based on actual experience, which will lead to more effective rules than could be adopted at the present time.

C. Any Definition of Commercial Matter for Interactive Services Must Take Into Account the Unique Nature of the Interactive Environment

Another issue on which the Commission invites comment is how to define “commercial matter” in the interactive context.²⁰ As indicated above, interactive services still are evolving and it is unclear if and how content providers will include commercial matter in such services (and what types of commercial matter would be included). Thus, the Commission should not consider defining “commercial matter” in interactive services at this time. One example of the unique challenges posed by defining “commercial matter” in this area is that many interactive features likely will be more akin to navigational features than commercial matter (e.g., a preview of a program on the same channel or another channel, or an interactive channel line-up for similar children’s programming). Therefore, again, before proceeding to specific rules, the Commission should learn more about the types of matter included in interactive children’s

²⁰ *Order and Further Notice* at ¶ 72.

television content. If the Commission nonetheless adopts such a definition at this time, the Commission must be cognizant of the fact that, as explained at length in Disney's petition for reconsideration, Congress unambiguously intended to exclude much promotional matter from commercial matter.²¹ Disney urges the Commission to be especially cautious when drawing lines between commercial matter and promotional material in the interactive context because of the non-linear nature of interactivity and because much interactive content could be more akin to a channel guide or navigational device than to traditional linear promotions or commercials.

V. REGULATION OF VIDEO ON DEMAND/SUBSCRIPTION VIDEO ON DEMAND IS UNNECESSARY AND THESE SERVICES SHOULD BE EXEMPT FROM REGULATION

The Order specified that the Commission's commercial limits "should apply to all children's programming, regardless of the free or pay status of the channel."²² The Order did not specifically address interactive programming options such as VOD/SVOD, presumably because the Commission deferred interactivity issues to the Further Notice. In its Petition for Reconsideration, Disney briefly noted that VOD/SVOD offerings should not be covered by the new children's programming rules but postponed further discussion until the instant proceeding. In this proceeding, the Commission should clarify that VOD/SVOD services currently are exempt from children's television regulation and conclude that further regulation of such services is unnecessary at this time.

²¹ In both the CTA House and Senate Committee Reports ("Committee Reports"), Congress specified that the definition of "commercial matter" should track the definition used by the Commission in its FCC Form 303. The Committee Reports directly quoted the form definition's listing of some material as commercial matter and other matter as non-commercial. Specifically excluded from the definition of commercial matter were all same-channel promotions that do not promote a sponsor and for which no consideration is received. H.R. REP. NO. 101-385, at 15 (1989); S. REP. NO. 101-227 at 21 (1989).

²² *Order and Further Notice* at ¶ 49.

The Commission should exclude VOD/SVOD from its children’s television regulations because such services are distinct from traditional MVPD channels and programming services. Unlike traditionally linear basic and expanded basic MVPD programming, VOD/SVOD programming is not delivered to the home on a regular and consistent basis. Instead, VOD/SVOD content is delivered only upon the direct order of a household (*e.g.*, through a link in its program guide) requesting that a specific program be delivered at that exact time of day, or be available for viewing at regular intervals throughout that day.

The level of parental control built into VOD/SVOD services also distinguishes these services from traditional MVPD channels. Specifically, parents already have exercised control when they make the affirmative choice to pay for a VOD/SVOD offering.²³ Built-in technical capabilities—such as pause and rewind functions—provide further control, and would make the children’s television rules difficult to apply. In all of these respects, VOD/SVOD offerings are more akin to premium services like HBO, pay-per-view options or programming stored on a digital video recorder, like TiVo. Given their unique, non-linear characteristics, the Commission should clarify that VOD/SVOD services, like premium services, are not subject to the children’s television commercial limits. The Commission previously has treated VOD/SVOD services differently on this basis, and should do so again here.²⁴

²³ Some MVPDs have established a “free to the consumer” VOD model (“FVOD”) in which VOD content is offered as part of a general digital tier. In this scenario, the MVPD does not charge a specific, additional fee for the FVOD channel or content; however, the viewer still must decide whether to purchase the digital tier containing the FVOD channel.

²⁴ In its recent plug-and-play decision, the Commission placed caps on the level of copy protection that may apply to various categories of MVPD programming. In defining the programming categories, the Commission grouped VOD, SVOD and pay-per-view programming in categories separate from other cable programming and broadcast programming categories. *See* Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment, *Second Report and Order*, FCC 03-225, CS Docket No. 97-80, PP Docket

VI. CONCLUSION

Interactive television services promise to deliver enriching content to children in a variety of innovative ways. Disney appreciates the Commission's concerns in this area. However, at this time, Disney respectfully suggests that the Commission should proceed with caution as it learns more about this innovative area. Ultimately, Disney believes that instead of attempting to regulate interactive services at this time, the best approach is for the Commission to actively monitor such services and work with the industry to encourage continued responsible implementation.

Respectfully submitted,

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No. 00-67 (rel. Oct. 9, 2003), at ¶¶ 65-74. The Commission also designated SVOD as an undefined business model. *Id.* at ¶74 (“We anticipate that SVOD will grow and evolve to a significant degree and that other forms of this service...will emerge in the near future. For this reason, we decline to classify SVOD as a defined business model...”).